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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,391	09/23/2003	Tongbi Jiang	M4065.0222/P222-B	1655
24998	7590	11/15/2005	EXAMINER	
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP			GEYER, SCOTT B	
2101 L Street, NW			ART UNIT	
Washington, DC 20037			PAPER NUMBER	

2812

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/667,391

Applicant(s)

JIANG ET AL.

Examiner

Scott Geyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 81-104 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 81-85, 87-97 and 99-104 is/are rejected.
- 7) ☒ Claim(s) 86 and 98 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>092303</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of claims 81-104 in the reply filed on 8-30-05 is acknowledged. The traversal is on the ground(s) that there is no undue burden in examining the claims. However, the applicant elected claims 81-104, and only claims 81-104 are pending. The requirement is still deemed proper and is therefore made FINAL, however, all pending claims are treated on their merits below.

Specification

The applicant is advised to update the amendment to the specification submitted on 9-23-03 to incorporate the patent number for application serial no. 09/680,473. The patent no. is 6,647,620.

Information Disclosure Statement

The references cited within the IDS document received on 9-23-03 have been considered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 81-85, 87-97 and 99-104 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 6, 12-16, 18-21 and 28-32 of U.S. Patent No. 6,647,620 B1 (Jiang et al.). Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims as recited in the application recite the same limitations as that of the cited US patent. In particular, refer to the following list for claim matching:

As to applicant's claim 81 and 92, see claim 1 of the '620 patent;

As to applicant's claim 82, see claim 2 of the '620 patent;

As to applicant's claim 83, see claim 3 of the '620 patent;

As to applicant's claim 84, see claim 4 of the '620 patent;

As to applicant's claim 85, see claim 6 of the '620 patent;

As to applicant's claim 87, see claim 12 of the '620 patent;

As to applicant's claim 88, see claim 13 of the '620 patent;

As to applicant's claim 89, see claim 14 of the '620 patent;

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As to applicant's claim 90, see claim 15 of the '620 patent;

As to applicant's claim 91, see claim 16 of the '620 patent;

As to applicant's claim 93, 97 and 104, see claim 18 of the '620 patent;

As to applicant's claim 94, see claim 19 of the '620 patent;

As to applicant's claim 95, see claim 20 of the '620 patent;

As to applicant's claim 96, see claim 21 of the '620 patent;

As to applicant's claim 99, see claim 28 of the '620 patent;

As to applicant's claim 100, see claim 29 of the '620 patent;

As to applicant's claim 101, see claim 30 of the '620 patent;

As to applicant's claim 102, see claim 31 of the '620 patent;

As to applicant's claim 103, see claim 32 of the '620 patent.

Allowable Subject Matter

Claims 86 and 98 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Geyer whose telephone number is (571) 272-1958. The examiner can normally be reached on weekdays, between 10:00am - 6:30pm. If attempts to reach the examiner by telephone are unsuccessful, the

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examiner's supervisor, Michael Lebentritt can be reached on (571) 272-1873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott Geyer *11/9/05*

Scott Geyer
November 9, 2005